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IN THE

Supreme Court of the United States

October Term, 1975
No. 75-1031

DANIEL SIFTON, ERIC SIFTON and LORI SIFTON, minors, by ELSIE CAROLINE SIFTON and ASHFORD DAVID SIFTON, their guardians,

Petitioners,

vs.

RICHARD THOMAS MURPHY; CURTIS PODRATZ; and DOES 1 through 20, Inclusive,

Respondents.

FREDERICK CHRISTIAN FRIES,

Petitioner,

vs.

CITY OF INGLEWOOD, STEVE COMBS, CHUCK NORRIS KARATE STUDIOS, INC., DOES 1 through 20, Inclusive,

Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI.

A Summary Statement of the Respondent's Contentions.

Sifton v. County of Ventura is an action brought by minor plaintiffs for the alleged wrongful death of their parents.

The plaintiffs were dismissed, by way of demurrer for failure to comply with the claims provisions of the California Government Tort Claims Act (California Government Code §900, *et seq.*).

The claims provisions of the California Government Code §900, *et seq.* (hereinafter all code sections will refer to the California Government Code unless otherwise stated) require that a claim against a local public entity be presented to it (§905) not later than 100 days after the accrual of the cause of action (§911.2). However, the claimant may still apply for leave to file a late claim (§911.4(a)) but the application is to be presented within one year of the date of the accrual of the cause of action (§911.4(b)). The time where a minor is without a guardian is not to be counted. The Claims Board is to grant the application if the claimant was a minor during the 100-day period (§911.6(b)(2)). A lawsuit cannot be brought until a claim therefor has been presented (§954.4) and a claimant may petition an appropriate court for relief from that action but only if the application for late claim was made within the one-year period (§946.6(c)).

The California Legislature has enacted these claims provisions as a modification of the common law rules concerning sovereign immunity. In doing so, it has set up a very comprehensive statutory scheme which allows certain safeguards to protect those whom, with valid reasons, have not filed their claims within a normal period. The claims provisions give minors a special status when filing a claim but still require minors to file a claim or at least an application to file a late claim within one year from the date of the wrong complained of.

The California Legislature, in modifying the common law rules of sovereign immunity, intended for each person who had a claim to file the claim against

the governmental entity so that the entity might act on the claim before needless costs of litigation were incurred, so that the governmental entity might provide for such claim in its fiscal budget and to give the entity prompt notification in order that the condition or practices giving rise to the claim may be expeditiously corrected.

Plaintiffs neither filed a claim against Ventura County nor did they apply for leave to file a late claim. Instead, plaintiffs sued Ventura County contrary to requirements that a claim be filed before suit.

The principle of sovereign immunity has throughout the history of this country been recognized. It has been recognized and approved by the United States Supreme Court for ages. Each of the fifty states of this country is sovereign in its own right. Consent by each sovereign state will alone enable the state to be sued. The California Constitution gives the California Legislature the power to provide a means by which valid claims may be made, and sued upon, against the State of California or its political subdivisions such as Respondent Ventura County. The California Government Tort Claims Act is the comprehensive statutory response by the Legislature to this constitutional mandate.

The California Government Tort Claims Act has long been upheld by the California courts as constitutional in that the State of California and its political subdivisions are a proper subject for legislative classification when the issue is immunity from suits against the same. Indeed, the California courts have never construed the California Government Tort Claims Act as a *total* waiver of sovereign immunity so as to

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put governmental entities on an equal footing with private entities with regard to suits thereon.

Three other state high courts have stricken down their respective states' statutory schemes on sovereign immunity as being violative of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution (Washington: *Jenkins v. State* 85 Wash.2d 883, 540 P.2d 1363 (1975) and *Hunter v. North Mason High School* 85 Wash.2d 810, 539 P.2d 845 (1975); Nevada: *Turner v. Staggs* 89 Nev. 230, 510 P.2d 879 (1973) cert. den. *sub. nom. Clark County v. Turner* 414 U.S. 1079, 94 S.Ct. 598, 38 L.Ed.2d 486 (1973); Michigan: *Reich v. State Highway Dept.* 386 Mich. 617, 194 N.W.2d 700 (1972)). But each of these three states' legislatures had intended to waive sovereign immunity so that private and public entities were to be liable to suit on a *completely equal* footing. That was the reason the highest courts of those three states struck down their respective government claims statutes as being unconstitutional.

Because there is such a distinct difference in the intendment of the California Government Tort Claims Act (*i.e.*, not to put governmental and private entities on a totally equal footing with regards to suit thereon) and the intendment of the tort claims statutes of Washington, Nevada, and Michigan (*i.e.*, to put governmental and private entities on a completely equal footing), there is no real conflict in the opinions of the California, Washington, Nevada, and Michigan Supreme Courts so as to warrant a writ of certiorari from this Court. Each State Supreme Court has issued an opinion which is adequate on state grounds and there is no need

for review by the United States Supreme Court. Respondent Ventura County therefore respectfully requests that this Court deny the instant petition for writ of certiorari.

Response to the Petition for Writ of Certiorari.

Respondent Ventura County prays that no writ of certiorari issue to review the judgment herein of the California Supreme Court entered in the instant case on October 23, 1975.

Opinion Below.

On December 28, 1973 the Superior Court of the State of California, for the County of Ventura, sustained without leave to amend Respondent Ventura County's demurrer to Petitioners' second amended complaint (for wrongful death) on the grounds that Petitioners had failed to allege that they had filed a claim with Ventura County before filing suit in accordance with the requirements of the California Government Tort Claims Act and that the statute of limitations had run. Judgment of Dismissal as to Respondent Ventura County was filed and entered on January 8, 1974 [C.T. 201] and Notice of Entry of Judgment was filed on January 9, 1974 [C.T. 203].

Petitioners filed their Notice of Appeal on January 25, 1974 [C.T. 204]. The Court of Appeal, Second Appellate District, State of California, in an unpublished opinion, *Sifton v. County of Ventura*, 2d Civil No. 44073 (Court of Appeal, filed June 30, 1975) (Petitioners' Appendix E), affirmed the judgment of dismissal by the Superior Court.

Petitioners' request for hearing in the Supreme Court of the State of California was summarily denied on

October 23, 1975. *Sifton v. County of Ventura,* 2d Civil No. 44073 (October 23, 1975) (Petitioners' Appendix A).

Jurisdiction.

The denial of the petition for hearing before the California Supreme Court was duly entered on October 23, 1975. The United States Supreme Court has jurisdiction to review the instant Petition under 28 U.S.C. §1257(3).

Constitutional Provisions and Statutes Involved.

United States Constitution.

Fourteenth Amendment, Section 1.

". . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

California Constitution.

Article II, Section 12.

"The Legislature may proscribe procedure for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents or employees."

Article III, Section 5.

"Suits may be brought against the state in such manner and in such courts as shall be directed by law."

California Statutes.

California Government Code §§905, 910, 911.2, 911.4, 915, 945.4 and 945.6 are set out in full in Appendix C to Petition for Writ of Certiorari. Cali-

fornia Government Code Section 911.6 (not set out in Appendix to the Petition) provides:

> *Grant or Denial of Application by Board.* (a) The board shall grant or deny the application within 45 days after it is presented to the board. If the board does not act upon the application within 45 days after the application is presented, the application shall be deemed to have been denied on the 45th day.
>
> (b) The board shall grant the application where:
>
> (1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced by the failure to present the claim within the time specified in Section 911.2; or
>
> (2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim; or
>
> (3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or
>
> (4) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

Questions Presented.

I

Whether a state, by reason of its sovereign immunity, can be sued where it has not consented to be sued.

II

Whether a sovereign state's comprehensive statutory scheme for providing suits against the state or its political subdivisions which is intended to provide a different procedural mode for suit against the state governmental entities than the procedural mode for suit against private entities is violative of the due process and equal protection clauses of the United States Constitution.

Statement of the Case.

Respondent Ventura County does not object to Petitioner's Statement of the Case (Petition, pp. 9-12) with the exception of a few facts which will be set out hereinbelow to keep the record straight.

(1) The date of the accident was February 11, 1971.

(2) Petitioners filed their suit against Murphy, Podratz, and Does 1 through 20 on July 27, 1971.

(3) Respondent's Demurrer to defendant Podratz's cross-complaint was sustained without leave to amend on August 31, 1973 for failure to bring suit within six months after the Podratz claim was denied by Ventura County (Government Code §945.6(a)(1)).

(4) Respondent's Demurrer to the Petitioners' Second Amended Complaint was sustained on December 28, 1973 without leave to amend on all grounds including not only the ground of non-compliance with the claims provisions of the Government Tort Claims Act but also on the ground that the statute of limitations had run. The latter argument had been made because Petitioners' original Complaint had alleged DOE I to be the owner of the car but Respondent had been served as DOE I in the First Amended Complaint, which amounted to stating a new cause of action for which even the statute of limitations applicable in a civil suit against a non-governmental entity had run.

REASONS NOT TO GRANT A WRIT OF CERTIORARI.

I

That a State or Its Political Subdivisions Is Immune From Suit Unless Consent Thereto Has Been Given Is a Principle Long Upheld by This Court but Petitioners Are Essentially Arguing That the Principle of Sovereign Immunity Is No Longer Valid.

Petitioners argue to this Court that they have been denied their due process and equal protection rights because they are forced to comply with the set of procedural rules the State of California has established for all suits against governmental entities in California. Petitioners argue that it is unconstitutional for the State of California to promulgate a different set of procedural rules for suits against governmental entities than for suits against non-governmental entities. But such an argument is just another way of saying that the State of California cannot constitutionally assert its sovereign right to consent or not consent to suit against the State or its political subdivisions such as Respondent Ventura County. The concept of sovereign immunity is as old as this country and this Court has long recognized the validity of this principle.

Probably the most cogent statement affirming the principle of sovereign immunity is that of Chief Justice Taney in *Beers v. State of Arkansas* 61 U.S. 527, 20 How. 527, 15 L.Ed. 991 (1857). In that case, the plaintiff had brought suit against the State of

Arkansas to collect on bonds issued by the State. While plaintiff's case was pending in the State's Circuit Court, the Arkansas General Assembly, acting pursuant to the Arkansas constitutional mandate that "The General Assembly shall direct by law in what courts and in what manner suits may be commenced against the State", established certain procedures with which a person had to comply in order to bring suit. Plaintiff failed to follow such procedures and his suit was dismissed. The judgment was affirmed by the Arkansas Supreme Court. Plaintiff sought relief from the United States Supreme Court, arguing that the procedural requirements imposed by the Arkansas General Assembly were unconstitutional insofar as they constituted an impairment of the obligations of the contracts between the State and plaintiff (United States Constitution, Article I, Section 10).

To this argument, Chief Justice Taney responded:

> "It is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission; but it may, if it thinks proper, waive this privilege and permit itself be made a defendant in a suit by individuals, or by another State. And as this permission is altogether voluntary on the part of the sovereignty, it follows that it may prescribe the terms and conditions in which it consents to be sued, and the manner in which the suit shall be conducted,

and withdraw its consent whenever it may suppose that justice to the public requires it."

Beers v. State of Arkansas, supra, 15 L.Ed., at 992.

In dismissing the suit for want of jurisdiction in the United States Supreme Court, the Honorable Chief Justice went on to say that the Arkansas General Assembly could modify its law at issue therein:

"if, upon experience, it was found that further provisions were necessary to protect the public interest . . . nor can this court [the United States Supreme Court] inquire whether the law operated hardly or unjustly upon the parties. . . . That was a question for the consideration of the legislature. They might have repealed the prior law altogether, and put an end to the jurisdiction of their courts in suits against the State, if they had thought proper to do so, or prescribe new conditions upon which the suits might still be allowed to proceed. . . . [I]t [the Arkansas legislature] merely regulated the proceedings in its own courts, and limited the jurisdiction it had before conferred in suits when the State consented to be a party defendant." 15 L.Ed., at 992-993.

The principle that Chief Justice Taney postulated—that a State can be sued only on its own conditions—has been reaffirmed at various times throughout the history of this Court. See, *e.g., Hans v. Louisiana* 134 U.S. 1, 10 S.Ct. 504, 33 L.Ed. 842, 845 (1890); *Palmer v. State of Ohio* 248 U.S. 32, 39 S.Ct. 16, 63 L.Ed. 108, 109 (1918); *Principality of Monaco v. State of Mississippi* 292 U.S. 313, 54 S.Ct. 745, 78 L.Ed.

1282, 1285-1286 (1934); *United States v. U.S.F. & G. Co.* 309 U.S. 506, 60 S.Ct. 653, 84 L.Ed. 894, 895-899 (1940); *Parden v. Terminal R. Co.* 377 U.S. 184, 84 S.Ct. 1207, 12 L.Ed.2d 233, 236 (1964); *Employees v. Missouri Public Health Department* 411 U.S. 279, 93 S.Ct. 1614, 36 L.Ed.2d 251, 254 (fn. 1) (1973).

The California Government Tort Claims Act is merely the response of the California Legislature to its constitutional mandate (California Constitution: Article II, Section 12 and Article III, Section 5) to devise procedures for suits against entities. See *Hayeshi v. Alameda County Flood Control & Water Conservation District* 167 Cal.App.2d 584 (1959). It is no different than the situation which was presented to this Court in *Beers v. State of Arkansas, supra,* when Chief Justice Taney ruled that the United States Supreme Court had no jurisdiction to review the Arkansas sovereign immunity statutes enacted by the Arkansas General Assembly pursuant to the mandate of the State of Arkansas Constitution.

What Petitioners are seeking in the instant case is for this Court to declare the concept of sovereign immunity to be meaningless and that the State of California has no right to set reasonable procedures under which it or its political subdivisions such as Ventura County may be sued. Considering the long-standing affirmance of the jurisprudential concept of sovereign immunity by this Court, Petitioners' argument certainly does not warrant this Court's attention and the instant Petition should be denied.

II

The California Government Tort Claims Act in Question Here Was Intended to Provide the Mechanism by Which California Governmental Entities May Investigate Claims Promptly, Negotiate Settlements Without Litigation, Prepare Proper Fiscal Planning, and Promptly Rectify Conditions and Practices Giving Rise to the Original Claim. Thus, There Is a Rational Relationship Between the Purpose of the Act and the Requirement That Claims Be Promptly Made to the Public Entity Before Bringing Suit.

Petitioners have argued that the tort claims provisions of the California Government Tort Claims Act are a "maze" of "traps and exceptions, and exceptions to the exceptions." (Petition, p. 16). Respondent Ventura County submits that all one has to do is to look at the statutory provisions complained of to recognize that they are a completely reasonable set of procedural guidelines that can easily be followed without too much difficulty.

The statutory system helps the average person present his own grievances. As with all such systems, there necessarily will be the need for a procedural plan which both the governmental entity and the claimant must follow. This can only serve to protect both parties from arbitrariness and capriciousness in the filing of claims. See generally, Van Alstyne, *California Government Tort Liability* (California Continuing Education of the Bar), §9.3, pages 414-415 (1964).

Petitioners claim that the California claim statutes are unconstitutional because they bear no rational relationship to the purpose behind their enactment to war-

rant a different set of procedural requirements for suits against governmental entities than the procedural requirements for suits against private entities (Petition, pp. 29, 36). In looking at the purpose behind the enactment of the claims statutes, it is incumbent upon this Court to look at the construction placed on the California statutes by California courts. *Albertson v. Millard* 345 U.S. 242, 73 S.Ct. 600, 97 L.Ed.2d 983, 985 (1953).

The California courts that have reviewed the claims provisions in question here have cited several purposes behind the enactment of these provisions. Among the purposes given constituting a legitimate state interest in the tort claims statutes are: 1) that the legislation is meant to prevent public monies from being consumed in unnecessary litigation by providing public entities an opportunity to negotiate settlements before undergoing the cost of suits and other expenses; 2) the requirement of filing claims before bringing suit permits the public entity responsible for making preparation for the fiscal year to become informed in advance as to possible future indebtedness or liability; 3) that the filing of a prompt claim gives the public entity time to investigate the merits of the claim while the evidence is still fresh, and; 4) that the public entity will have a chance to rectify and correct the conditions or practices which gave rise to the original claim. *City of San Jose v. Superior Court* 12 Cal.3d 447, 455 (1974); *Viles v. State of California* 66 Cal.2d 24 (1967); *Stanley v. City and County of San Francisco* 48 Cal.App.3d 575, 579 (1975); *Sifton v. County of Ventura*, Petitioners' Appendix E, p. E-10 (1975); *Roberts v. State of California* 39 Cal.App.

3d 844, 848 (1974); *Bozaich v. State of California* 32 Cal.App.3d 688 (1973); *Jamison v. State of California* 31 Cal.App.3d 513, 518 (1973).

It has been stated that "the rationale behind the doctrine of sovereign immunity is the protection of the state's fiscal integrity." *Jordan v. Gilligan* 500 F.2d 701, 706 (6th Cir. 1974). While that is undoubtedly true, and certainly that is one of the purposes behind the California tort claims provisions as discussed above, it should also be emphasized that public entities own and operate so many public facilities that there is good reason behind requiring a prompt claim to be made against a public entity so that the dangerous facility may be corrected quickly before other members of the public use that dangerous facility. *Cf., Stanley v. City and County of San Francisco, supra,* 48 Cal.App. 3d, at 847.

Petitioners alleged in their complaint that a dangerous road condition proximately caused the death of their parents. Certainly if this claim were true, there is a compelling public interest in having this claim be made promptly so that Ventura County could expeditiously investigate and make improvements if necessary to prevent any others from being injured while traveling on this allegedly dangerous road. If Petitioners had only to file a suit against Ventura County within the period of the statute of limitations applicable to suits against non-governmental entities (Respondent concedes that there is a longer statute of limitations in such a case), it is entirely possible the allegedly dangerous condition of the road would not come to light for years. While this may be adequate for private entities that operate facilities open to a limited group

of people, it certainly does not protect the public interest in having public facilities open to all the public operated in a constantly safe manner.

Petitioners have claimed that there is no legitimate California state interest in making suits be filed against California public entities in a different fashion than suits against non-public entities. But the discussion above adequately shows the state interest in legislation that requires a person to file a claim against the public entity before a suit can be brought (Government Code §945.6).

Notwithstanding the statement of Chief Justice Taney in *Beers v. State of Arkansas, supra,* 15 L.Ed., at 992-993 to the effect that the state may impose any conditions it wants on suits against it or its political subdivisions, one cannot help but conclude that there is good reason for the State of California to put it and its political subdivisions on a different footing than private entities with regards to suits thereon. The claims provisions of the Government Tort Claims Act were enacted for the purposes explained above. Petitioners have not shown that the claims provisions do not provide what they were intended to provide.

Moreover, the claims provisions are not unreasonably burdensome. Petitioners' suit against Respondent County was dismissed because Petitioners failed to comply with such claims procedures. Petitioners could have complied with these provisions, but did not do so. As the California District Court of Appeal found, Petitioners have offered no reason whatsoever why they did not file a claim against Ventura County (§911.2), why they failed to apply for a late claim (§911.4), or why they did not even apply to the

trial court for relief from §945.4. *Sifton v. County of Ventura,* Petitioners' Appendix E, pages E-8, E-14. The California courts require at least some compliance with the tort claims statute before a suit may be filed. See, *e.g., Los Angeles City School District v. Superior Court* 9 Cal.App.3d 459, 465 (1970); *Ridley v. City etc. of San Francisco* 272 Cal.App.2d 290, 292 (1969); *Stromberg, Inc. v. L.A. County Flood, etc. Dist.* 270 Cal.App.2d 759, 762-763 (1969). "It is a familiar principle that in an action against the sovereign, as this is in effect, all formal conditions attached to consent to suit must be performed strictly [footnote omitted]." *Poe v. Stevens* 267 F.2d 449, 450 (9th Cir. 1959). Even this Court has said that "Men must turn square corners when they deal with the government. If it attaches even purely formal conditions to its consent to be sued, those conditions must be complied with." *Rock Island, Arkansas & Louisiana Railroad Company v. U.S.* 254 U.S. 141, 41 S.Ct. 55, 65 L.Ed. 188, 189 (1920). If Petitioners had at least attempted to comply with the claims provisions, their case may arouse more sympathy. But they failed to comply with even the simplest of requirements. Theirs is certainly not the case to be presented to this Court to argue that the claims provisions are unreasonable, arbitrary, or capricious.

Petitioners' request for a writ of certiorari to be issued by this Court should be denied. The California tort claims provisions were enacted by the California Legislature pursuant to the mandates of the California Constitution that the Legislature provide the procedures by which claims and suits may be brought against the State of California and its political subdivisions.

There are good reasons why the public entities in California have special rules and procedures as conditions precedent to suit in California. The purposes given by the California courts to these special rules and procedures amply demonstrate that the California claims provisions attacked by Petitioners here effectuate the legitimate state interests behind their enactment.

III

The California Government Tort Claims Act Has Been Held Constitutional by the California Supreme Court. The Sovereign Immunity Statutes Held Unconstitutional by the Washington, Nevada, and Michigan State Supreme Courts Were Substantially Different Than the California Statute. The Intent of the Washington, Nevada, and Michigan Legislatures in Enacting Their Respective Statutes Was to Put All Governmental Entities on an Equal Footing With Private Entities. But the California Sovereign Immunity Statute Was Not so Intended.

As Petitioners concede (Petition, pp. 20-23), the California Supreme Court has upheld the California Government Tort Claims Act against due process and equal protection arguments on three occasions. *Whitfield v. Roth* 10 Cal.3d 874, 889-890 (fn. 20) (1974); *Tammen v. County of San Diego* 66 Cal.2d 468, 481 (1967); *Dias v. Eden Township Hospital Dist.* 57 Cal.2d 502, 504 (1962).

Petitioners have argued that this Court should grant certiorari in the instant case because the Washington, Nevada, and Michigan State Supreme Courts have stricken down their respective state sovereign immunity statutes as unconstitutional and that a conflict thus

exists between the opinions of those state high courts on the one hand and the California Supreme Court on the other hand. Respondent Ventura County submits that Petitioners have misread the import of the Washington, Nevada, and Michigan cases and that no such conflict exists to merit this Court's issuance of a writ of certiorari.

In *Reich v. State Highway Dept.* 386 Mich. 617, 194 N.W.2d 700 (1972), the Michigan Supreme Court scrutinized a 60-day notice of claim statute. That court, in holding the claims provisions violative of equal protection guarantees, noted that:

> "The object of the legislation under consideration is to waive the immunity of governmental units and agencies from liability for injuries caused by their negligent conduct, *thus putting them on an equal footing with private tortfeasors . . .*
>
> *"Contrary to the legislature's intention to place victims of negligent conduct on equal footing,* the notice requirement acts as a special statute of limitation which arbitrarily bars the actions of the victims of governmental negligence after only 60 days . . ." [Emphasis added] *Reich v. State Highway Dept., supra,* 194 N.W.2d, at 702.

The next state high court to strike down its state's notice statute was the Nevada Supreme Court in 1973. But just as the Michigan Supreme Court was confronted with a claims provision in derogation of the general intent of the Michigan sovereign immunity scheme, so was the Nevada Supreme Court.

Indeed, the Nevada Supreme Court looked at Nevada statute NRS 41.031 which stated that the State of

Nevada waived for it and its political subdivisions "immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against individuals and corporations . . ." See *Turner v. Staggs, supra,* 89 Nev. 230, 510 P.2d 879, at 881 (fn. 5). The Nevada Supreme Court then went on to reason that:

> *"Contrary to the mandate of Art. 8, §5 of the Nevada Constitution [footnote omitted] and the intention of the legislature to place victims of negligent conduct on equal footing* (NRS 41.031), failure to give the 6 month statutory notice arbitrarily bars the victims of governmental tort while the victims of private tort suffer no such bar." [Emphasis added] *Turner v. Staggs, supra,* 510 P.2d, at 882-883.

Following the Michigan and Nevada Supreme Courts in striking down state claims provisions was the Washington Supreme Court in 1975. In *Hunter v. North Mason High School, supra,* 85 Wash.2d 810, 539 P.2d 845, the Washington Supreme Court stated that:

> ". . . Our state has clearly and unequivocally abjured any desire to insulate itself from liability in its absolute waiver of sovereign immunity, *which places the government on an equal footing with private parties defendant.*
>
> "In *Kelso v. Tacoma* 63 Wash. 2d 913, 918, 390 P.2d 2, 6 (1964), we recognized the legislature's manifest intent to 'change the public policy of the state' away from sovereign immunity deprived municipal corporations as well as the

> state itself of all vestiges of the shield they had at common law [case cited]. This intention we noted in *Kelso* was clarified beyond any doubt by the passage of Laws of 1963, ch. 159, §2 which provided that the state '*shall be liable* for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation.' (Italics ours.). . . . The unequivocal waiver of sovereign immunity in the 1963 Act thus clearly indicates that 'the [state's] waiver of tort immunity is unbridled by procedural conditions pertaining to the consent to be sued . . .' [case cited].
>
> "*Any policy of placing road blocks in the way of potential claimants against the state having been abandoned,* we cannot uphold nonclaim statutes simply because they serve to protect the public treasury. Absent that justification, there is no basis, substantial or even rational [footnote omitted], on which their discrimination between governmental plaintiffs and others can be supported. Thus, they cannot stand under the equal protection clause of the Fourteenth Amendment to the United States Constitution [footnote omitted]." [Emphasis added] *Hunter v. North Mason High School, supra,* 539 P.2d, at 850.

The Washington Supreme Court in *Jenkins v. State, supra,* 85 Wash.2d 833, 540 P.2d 1363, was faced, within a month of its decision in *Hunter, supra,* with the anomalous situation where the state had different time provisions for commencing suits against counties

than for commencing suits against other governmental entities. The Washington Supreme Court found that:

> "In practical terms RCW 36.45.030, in the context of other statutes relating to governmental tort liability, establishes two distinct levels of classification of discrimination. First, the provision treats counties different than all other governmental entities, including the state, by providing for a significantly shorter period during which actions may be commenced against it. Second, the state discriminates between the victims of the tortious conduct of counties and victims of the tortious conduct of other governmental entities . . .
>
> "No rational permissible reason has been offered, nor have we been able to discern one, which would justify making such a distinction between counties and other governmental entities or between victims of the tortious conduct of counties and victims of other governmental entities . . .
>
> "Accordingly, in the absence of a rational basis for providing otherwise, all persons similarly situated must be provided equal access to the courts for redress of wrongs committed by governmental entities. As stated above, we have been unable to discern any rational basis for treating counties and victims of their tortious conduct any differently than other governmental entities and victims of their tortious conduct. Accordingly, we hold RCW 36.45.030 unconstitutional as violative of Const. Art. I, §12 and U.S. Const. amend. 14 insofar as it purports to impose a different time limitation on the commencement of tort actions against counties than is imposed on the commencement of

> tort actions against other governmental entities in the state [footnote omitted]." *Jenkins v. State, supra,* 540 P.2d, at 1367-1368.

It is obvious that the Michigan, Nevada, and Washington State Supreme Courts all held the respective statute of each state unconstitutional for one reason only —that each state had totally waived sovereign immunity. After each state's legislature had expressly declared that governmental and private tortfeasors were to be treated equally with regard to suits thereon, the legislatures went ahead and set different procedural requirements for suits against one entity than against the other. Therefore, the Supreme Court of each state could not help but determine that the different classifications were unconstitutional. No other interpretation of these cases can possibly be made, notwithstanding the dictum offered by Petitioners (Petition, pp. 27-28, 30-35, 38). See, Note, "Notice of Claim Provisions: An Equal Protection Perspective," 60 *Cornell L. Rev.* 417, 432-435 (1975); Comment, "The Constitutionality of California's Public Entity Tort Claim Statutes," 6 *Pacific L.J.* 30, 45 (1975).

The California Government Tort Claims Act, contrary to the statutes in Washington, Nevada, and Michigan, has never been construed to be a total waiver of sovereign immunity so as to put private and governmental entities on an equal footing. In addition to the numerous courts in California which have upheld the constitutionality of the Government Tort Claims Act generally, four California appellate courts have been presented with the Michigan (*Reich v. State Highway Dept., supra*) and Nevada (*Turner v. Staggs, supra*) cases in support of arguments that the California claims

provisions should be held unconstitutional. These courts have all uniformly held that California has not waived sovereign immunity so as to put governmental entities on an equal footing with private entities and all have uniformly ruled that the Nevada and Michigan cases are totally inapposite for that reason. *Stanley v. City and County of San Francisco, supra,* 48 Cal.App.3d, at 582; *Fries v. Combs,* Petitioners' Appendix D, pages D-5—D-6 (1975); *Sifton v. County of Ventura, supra.* Petitioners' Appendix E, pages E-22—E-25; *Roberts v. State of California,* 39 Cal.App.3d 844, 848-850 (1974).

In *Roberts,* the Court, when presented with the Nevada and Michigan cases, said:

> "There is a basic distinction, however, between statutes that aim at placing or actually do place the state or other public entities on an equal basis with private tortfeasors and our California statutes.
>
> "Our statutes were enacted after the decision of the California Supreme Court in *Muskopf v. Corning Hospital Dist.* (1961) 55 Cal.2d 211 [11 Cal.Rptr. 89, 359 P.2d 457], which held that common law governmental immunity must be discarded and indicated a disposition to treat all tortfeasors, public and private, alike insofar as basic liability was concerned. The *legislative response to Muskopf achieved a result entirely different from that which plaintiff urges should have been effected, it enacted a series of statutes to provide, in effect, that there is governmental immunity except for the very specific areas in which the statutes allowed suits.* (Sec. Gov. Code, §815; *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 931-932 [101 Cal.Rptr. 568, 496 P.2d 480]) . . .

> "The argument in plaintiff's closing brief that 'when the state undertakes to divest itself from the cloak of immunity it must stand on an equal basis with other similarly situated tortfeasors' would have merit only if the California Legislature so provided, or if some legislative action indicated that the reasons for the claims statute no longer had compelling force. But it did not. The fact that other states moved in that direction is irrelevant . . ." [Emphasis added] *Roberts v. State of California, supra,* 39 Cal.App.3d, at 849.

Just as the California courts have ruled that there is a substantial difference between statutes which intended to totally waive sovereign immunity and thereby put governmental and private entities on an equal footing, and have ruled the California statutes as constitutional on this basis, other state courts have found their respective states' statutes constitutional because sovereign immunity had not been waived. See, *e.g., Tessier v. Ann & Hope Factory Outlet, Inc.* 332 A.2d 781, 782-783 (R.I., 1975) (distinguishing *Reich* and *Turner, supra*); *Wilson v. District of Columbia* 338 A.2d 437, 438 (fn. 2) (D.C. Ct. of App., 1975) (distinguishing *Reich* and *Turner, supra*); *Newlan v. State* 535 P.2d 1348, 1352-1353 (Idaho, 1975); *Awe v. University of Wyoming* 534 P.2d 97, 103-104 (Wyoming, 1975); *Brantley v. City of Dallas* 498 S.W.2d 452, 455 (Tex. Civ. App. 1973), cert. den. 415 U.S. 983 (1974) (distinguishing *Reich, supra*); *Lunday v. Vogelman* 213 N.W.2d 904, 908 (Iowa, 1973) (distinguishing *Reich, supra*); *Krause v. State* 31 Ohio St.2d 132, 285 N.W.2d 736, 744-745 (Ohio, 1972); *Housewright v. La Harpe* 51 Ill.2d 357, 282 N.E.2d 437 (Ill., 1972); see also Annot., 59 A.L.R.3d 93.

As discussed above, Respondent Ventura County submits that there is no real conflict between the Michigan, Nevada, and Washington opinions on the one hand and the opinion of the California Supreme Court on the other hand. Each state high court has construed its respective sovereign immunity statute as either a total waiver of sovereign immunity thus disallowing legislative classifications or as not a total waiver of sovereign immunity thereby allowing a proper legislative classification. Each court has ruled on grounds peculiar to its state. This Court denied a writ of certiorari in *Turner v. Staggs, supra,* cert. den. *sub nom. Clark County v. Turner* 414 U.S. 1079, 94 S.Ct. 598, 38 L.Ed.2d 486 (1973) because the judgment in the state court rested on adequate state grounds. Respondent submits the same is true for the instant Petition, because of the distinction that California has not totally waived sovereign immunity as have Washington, Nevada, and Michigan. The Petition for a Writ of Certiorari should therefore be denied.

IV

The Claims Provisions of the California Government Tort Claims Act Are Ameliorative as to Disabilities Affecting Minors and Are Not so Unreasonable so as to Be Ruled Unconstitutional.

Petitioners have argued that the claims provisions in question here are unconstitutional both on their face and as applied to minors. Respondent submits that the above discussion adequately shows the claims provisions to be constitutional on their face.

To the argument that the claims provisions are unconstitutional as applied to minors, Respondent Ven-

tura County respectfully refers this Court to the opinion rendered below by the California District Court of Appeal in *Sifton v. County of Ventura* (Petitioners' Appendix E, pp. E-13—E-22). As the court pointed out, especially at pages E-20—E-22, California has liberal claims provisions to ameliorate any possible disabilities incumbent on minors. Certainly, these ameliorative provisions demonstrate the justness of California's claims requirements imposed on minors. *Cf., Murray v. City of Milford, Connecticut* 380 F.2d 468, 473 (2d Cir. 1967).

Conclusion.

The claims provisions of the California Government Tort Claims Act were adopted by the California Legislature pursuant to the California Constitution. The Legislature, in accordance with long-standing principles of sovereign immunity permitting states to impose conditions on suits thereon, placed certain restrictions on the right to sue the State of California or its political subdivisions. The restrictions imposed bear a rational relationship to the purposes intended and are thus constitutional. In effectuating a declared California public policy to favor minors, certain ameliorative provisions were established for the claims of minors.

The California Legislature did not intend to totally waive sovereign immunity so as to put governmental entities on an equal footing with private entities. The Michigan, Nevada, and Washington state legislatures totally waived sovereign immunity. For that reason, the Supreme Court of Michigan, Nevada, and Washington ruled that legislative classifications of governmental entities distinct from private entities in their

states were unconstitutional. Because of this basic difference, no conflict exists between the opinions of the California Supreme Court (upholding the California claims provisions) on the one hand and the opinions of the Michigan, Nevada and Washington Supreme Courts (striking down the claims provisions of their respective states) on the other.

It is respectfully submitted that, inasmuch as no conflict exists for this Court to decide, the instant Petition for Writ of Certiorari be denied.

Respectfully submitted,

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